

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8451 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N.G.VAKHARIA

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner

MS SIDDHI TALATI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/09/97

ORAL JUDGMENT

#. Having heard the learned counsel for the parties, I am satisfied that it is a litigation which is a result of arbitrary and perverse approach of respondents in the matter of petitioner. It is not in dispute that the petitioner has retired from the services as Chief Engineer on 31st July 1987. Under the order dated 1st June 1988, the petitioner has been considered to be senior to one Shri H.N.Shah in the cadre of Chief

Engineer. Vide this order, the petitioner has been given deemed date of promotion to be 26th March 1982 instead of January 1983, on the post of Chief Engineer, i.e. the date on which Shri H.N.Shah has been given promotion on the said post. The petitioner has been admittedly given all retirementary benefits treating him to be promoted on the post of Chief Engineer from 26th March 1982. Though petitioner has retired on 31st July 1987, unnecessarily a dispute has been created by respondents by placing his name, in the provisional seniority list of Chief Engineers published on 17th March 1994, at Sr.No.8, i.e. not only below Shri H.N.Shah, but below four other officers. The petitioner having apprehension of some adverse orders that may be passed against him taking into account his position as reflected in the provisional seniority list in the cadre of Chief Engineers, filed a representation and prayed for showing his name above Shri H.N.Shah. But that representation of the petitioner came to be rejected under a non speaking order dated 7th June 1994. Hence this Special Civil Application.

#. In the provisional seniority list which has been published in the year 1994, I find that the persons who have been placed at Sr.No. 1 to 8 have already retired from service. When all these persons have retired from service, what was the necessity for respondents to show their names in the said seniority list? The learned counsel for the respondents has failed to show that there was some inter-se dispute in between these persons on seniority and in this factual position, it was absolutely uncalled for on the part of respondents to show the names of retired persons in the provisional seniority list and give rise to the litigation which was otherwise avoidable. Be that as it may, if we go by substance of the matter, the placement of petitioner at Sr.No.8 is otherwise substantially inconsequential. By change of seniority in the cadre concerned, there may be two consequences; one is to take back some benefits given to the petitioner earlier or the person who has been shown senior to him may claim for deemed date of promotion etc. from the date on which he has been given promotion. The petitioner is claiming seniority above Shri H.N.Shah, who undisputedly was promoted on the post of Chief Engineer on 26th March 1982, the date on which the petitioner has also been promoted. So there may not be any difficulty in between these two persons. Then next comes Shri A.T.Doshi who has been promoted on the post of Chief Engineer on 3.3.82. Similar is the position of Shri G.N.Kharod and Shri H.M.Shah. So these three persons may not have any grievance against the deemed date of promotion given to the petitioner on the

post of Chief Engineer. The only person, i.e. Shri D.C.Shah who has been promoted on the post of Chief Engineer on 29th April 1983 may raise some claim for the deemed date of promotion from 26th March 1982. If we go by the revised date of promotions, then Shri D.C.shah has been given promotion from 3.1.83 and in that case, the difference is of less than nine months between Shri D.C.Shah and the petitioner. However, in the seniority list of 1994, revised date of promotion has been given to the petitioner of 29th April 1983 and because of that, the petitioner rightly had apprehension that whatever benefit which has been given to him treating him to be promoted from 26th March 1982 may be sought to be taken back. This exercise which has underbeen taken after seven years of retirement of the petitioner cannot be made as a base for revising of the pay and other retirementary benefits of the petitioner. The petitioner has been granted all these benefits and only because of some change of date of promotion, it cannot be said to be justified on the part of respondents to create apprehension in the mind of petitioner. Otherwise also, after so many years, the respondents though would have changed the date of promotion, whatever actual benefits already given to the petitioner could not have been taken from him. It is true that till date, this order of 1994 has not been given effect to. Now we are in 1997. So after more than ten years of retirement of petitioner, the consequential effect of change of date of promotion to the petitioner on the post of Chief Engineer cannot be given effect to.

#. In the result, this Special Civil Application succeeds and it is hereby ordered that whatever retirementary benefits which have been given to the petitioner by treating him to be promoted in the cadre of Chief Engineer from 26th March 1982 shall not be taken back irrespective of what has been reflected in the provisional seniority list, annexure 'A' dated 17th March 1994. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)